

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SPENCER R. BRASURE,

Plaintiff,

v.

ROBERT AYERS, Warden,

Defendant.

No. C 08-01528 JF (PR)

ORDER OF DISMISSAL; DENYING
MOTION FOR APPOINTMENT OF
COUNSEL

(Docket No. 2)

Plaintiff, a California prisoner incarcerated at San Quentin State, filed the instant civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has filed a motion for appointment of counsel (Docket No. 2). Plaintiff was granted leave to proceed in forma pauperis. (Docket No. 6.)

DISCUSSION

A. 28 U.S.C. § 1915A(a) Screening

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

1 See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and
2 dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may
3 be granted or seek monetary relief from a defendant who is immune from such relief. See id.
4 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. See Balistreri v.
5 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
7 elements: (1) that a right secured by the Constitution or laws of the United States was
8 violated, and (2) that the alleged violation was committed by a person acting under the color
9 of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

10 B. Legal Claims

11 According to the complaint, Plaintiff was sentenced to death following his state
12 conviction for first degree murder. Plaintiff filed an automatic appeal of the judgment which
13 stays the execution of the judgment in all cases where a sentence of death has been imposed.
14 See California Penal Code § 1243. The judgment against Plaintiff included restitution
15 penalties. Plaintiff alleges that the automatic appeal stays all orders, including the taking of
16 money from his trust account to pay restitution. Plaintiff claims that Defendant therefore
17 acted wrongfully in continuing to withdraw money from his trust account to pay restitution
18 fines after the judgment had been stayed.

19 1. Review of State Court Decision

20 Plaintiff presented the case to the state court in the form of a state habeas petition.
21 (Compl. Ex. 3.) The state court denied the petition, finding that money was not improperly
22 being collected and withdrawn from Plaintiff's account because the civil remedy provided to
23 victims in the form of restitution was not stayed under § 1243. (Id. at 3.) In the instant §
24 1983 complaint, Plaintiff is essentially appealing the state court's interpretation of § 1243.
25 Plaintiff would have this Court reverse the state court's finding with respect to its
26 interpretation of state law, which is not permitted. See Bradshaw v. Richey, 546 U.S. 74, 76
27 (2005); Hicks v. Feiock, 485 U.S. 624, 629 (1988). Accordingly, this claim is dismissed for
28 failure to state a claim upon which relief may be granted. See 28 U.S.C. § 1915A(b)(1),(2).

1 2. Due Process

2 Plaintiff claims that “enforcement of the judgment through civil remedies conflicts
3 with Penal Code Sections 1239(b) and 1243, and denie[s] [Plaintiff] his due process rights
4 under the state and federal constitutions.” (Compl. at 8.)

5 The Due Process Clause protects persons against deprivations of life, liberty or
6 property without adequate process. Wilkinson v. Austin, 545 U. S. 209, 221 (2005). Those
7 who seek to invoke the procedural protections of the Due Process Clause must establish that
8 their life, liberty or property is at stake. Id. First, the liberty interest in question must be one
9 of “real substance.” Sandin v. Conner, 515 U.S. 472, 477-87 (1995). A liberty interest of
10 “real substance” generally will be limited to freedom from (1) restraint that imposes “atypical
11 and significant hardship on the inmate in relation to the ordinary incidents of prison life,” id.
12 at 484, or (2) state action that “will inevitably affect the duration of [a] sentence,” id. at 487.
13 Second, the state statutes or regulations must narrowly restrict the power of prison officials to
14 deprive the inmate of the liberty interest. Id. at 477- 87.

15 In the instant case, Plaintiff must establish that the deprivation of money taken from
16 his trust account to pay restitution implicates due process because it has resulted in the
17 imposition of ongoing conditions of confinement creating an “atypical and significant
18 hardship on the inmate in relation to the ordinary incidents of prison life.” Id. at 484.
19 Plaintiff does not. It cannot be said that the enforcement of a judgment that imposes
20 restitution payments following a state conviction poses such an “atypical and significant
21 hardship” in relation to the “ordinary incidents of prison life” as contemplated by Sandin.
22 See id. at 484.

23 Furthermore, Plaintiff fails to show that the state statute or regulation, *i.e.*, California
24 Penal Code § 1243, narrowly restricts the power of prison officials to deprive the inmate of
25 the liberty interest. Id. at 477- 87. Section 1243 states that “[a]n appeal to the Supreme
26 Court or to a court of appeal from a judgment of conviction stays the execution of the
27 judgment in all cases where a sentence of death has been imposed....” Cal. Penal Code §
28 1243. Plaintiff claims this language requires that the entire judgment be stayed and not just

1 the imposition of the death sentence. The Court does not agree. Part of the title of the statute
2 is "stay of judgment of death" and specifically applies only to judgments "where a sentence
3 of death has been imposed." Id. The statute does not narrowly restrict the power of the state
4 court or prison officials to enforce judgments other than the execution of the death sentence,
5 such as restitution payments. Plaintiff has failed to show that prison official violated due
6 process. Accordingly, this claim is dismissed for failure to state a claim upon which relief
7 may be granted. See 28 U.S.C. § 1915A(b)(1),(2).

CONCLUSION

10 For the reasons stated above, this action is DISMISSED for failure to state a claim
11 upon which relief may be granted. See 28 U.S.C. § 1915A(b)(1),(2).

12 Plaintiff's motion for appointment of counsel (Docket No. 2) is DENIED as moot.

13 IT IS SO ORDERED.

14 DATED: 7/17/08


JEREMY FOGEL
United States District Judge